

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 64-89

THURLOW L. MASON, )  
 )  
 Complainant, )  
 )  
 -vs- )  
 )  
 R. NADIEAN JENSEN, JIM MAYES, )  
 JULIE DAHLEN, KARI CAMPBELL, )  
 WANDA STAFFORD, ORIN MARSH, )  
 THE AMERICAN FEDERATION OF )  
 STATE, COUNTY AND MUNICIPAL )  
 EMPLOYEES MONTANA STATE COUN- )  
 CIL NO. 9, AND AMERICAN FED- )  
 ERATION OF STATE, COUNTY AND )  
 MUNICIPAL EMPLOYEES LOCAL 971, )  
 )  
 Defendants. )

FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER

\* \* \* \* \*

I. INTRODUCTION<sup>1</sup>

Pursuant to a stipulation reached during a January 26, 1990 per-hearing conference the Hearing Examiner issued an order setting briefing schedule on January 29, 1990. In that order the above-captioned matter was to be submitted as follows:

- (1) There will be no hearing in the above captioned matter;
- (2) The parties will provide the Hearing Examiner and each other with copies of their exhibits and a statement explaining those exhibits and setting forth their respective position postmarked no later than February 16, 1990;

---

<sup>1</sup>It should be noted that the Hearing Examiner considered this matter simultaneously with ULP 62-89: Myrick, Sevors and Berry V. Jensen, American Federation of State, County and Municipal Employees, et al.

- 1 (3) The parties have the opportunity to provide the  
2 Hearing Examiner and each other with a rebuttal  
3 statement which is to be postmarked no later than  
4 February 28, 1990.

## 5 II. BACKGROUND

6 1. On December 6, 1989 the Complainant, Thurlow L. Mason,  
7 filed an unfair labor practice charge with the Board of Personnel  
8 Appeals alleging that the defendants R. Nadean Jensen, Jim  
9 Mayes, American Federation of State, County and Municipal  
10 Employees Local 971 et al violated Section 39-31-402(1) MCA and  
11 39-31-201 MCA when the defendants initiated internal union  
12 charges against the Complainant accusing him of violating the  
13 American Federation of State, County and Municipal Employees  
14 International Constitution by attempting to decertify the  
15 American Federation of State, County and Municipal Employees  
16 Local 971 as the exclusive bargaining representative for certain  
17 employees at the Montana Developmental Center (Boulder River  
18 School and Hospital).

19 2. The American Federation of State, County and Municipal  
20 Employees Montana State Council No. 9 filed a Response denying  
21 the charge asserting that the defendants were acting within their  
22 rights invoking internal union disciplinary action against the  
23 Complainant.

24 3. On December 13, 1989, Joseph V. Maronick was assigned  
25 to investigate the matter. On December 15, 1989, an Investiga-  
26 tion Report and Determination was issued finding probable merit.

1           4.     On December 19, 1989, Arlyn L. Plowman was appointed  
2     Hearing Examiner. On January 5, 1990, a Pre-hearing Notice was  
3     issued. A January 26, 1990 Pre-hearing Conference resulted in  
4     the aforementioned stipulation and Order Setting Briefing  
5     Schedule.

6     III. ISSUE

7           Whether the Defendants, R. Nadlean Jensen, Jim Mayes,  
8     American Federation of State, County and Municipal Employees  
9     Local 971 et al violated the Complainant, Thurlow Mason's  
10    Section 39-31-201 rights and committed an Unfair Labor Practice  
11    as defined in Section 39-31-402 MCA.

12    IV. FINDINGS OF FACT

13           1.    The American Federation of State, County and Municipal  
14    Employees, Montana State Council No. 9/American Federation of  
15    State, County and Municipal Employees Local 971 is the exclusive  
16    bargaining representative for certain employees of the Montana  
17    Department of Institutions at the Montana Developmental Center  
18    (Boulder River School and Hospital).

19           2.    The Complainant is an employee of the State of Montana  
20    and a member of the Montana Developmental Center bargaining unit  
21    represented by the American Federation of State, County and  
22    Municipal Employees.

23           3.    During the spring of 1989 the Complainant and other  
24    members of American Federation of State, County and Municipal  
25    Employees Local 971 were active in an unsuccessful attempt to

1 decertify the American Federation of State, County and Municipal  
2 Employees as the exclusive bargaining representative for their  
3 bargaining unit.

4 4. Following the defeat of the decertification effort the  
5 Defendants brought internal union disciplinary action against the  
6 Complainant. In a December 12, 1989 letter to John Seferian,  
7 Chairman of the American Federation of State, County and Municipi-  
8 pal Employees Judicial Panel, the Defendants charged the Com-  
9 plainant with violating the American Federation of State, County  
10 and Municipal Employees International Constitution in that the he  
11 filed a decertification petition on April 24, 1989 against  
12 American Federation of State, County and Municipal Employees  
13 Local 971 and called for an independent union of his own crea-  
14 tion. The defendants requested that the Judicial Panel assume  
15 jurisdiction and that the Complainant, if found guilty, be (a)  
16 fined an amount equal to one year's dues; (b) be suspended from  
17 the right to hold office or seek any elected position at any  
18 level of the union for a period of four years, and; be suspended  
19 from membership for a period of two years.

20 5. The Defendants' charges against the Complainant were  
21 the subject of an American Federation of State, County and  
22 Municipal Employees Judicial Panel proceeding on November 30,  
23 1989 in Butte. The Complainant left the judicial panel proceed-  
24 ing without presenting a defense after raising legal and due  
25 process objections and moving for dismissal.

1           6. In a decision dated January 9, 1990, Jeane Lambie,  
2 American Federation of State, County and Municipal Employees  
3 Judicial Panel Member found the Complainant guilty of violating  
4 American Federation of State, County and Municipal Employees  
5 International Constitution and expelled him from membership.

6 V. CONCLUSIONS OF LAW

7           1. The Board of Personnel Appeals has jurisdiction in this  
8 matter pursuant to Section 39-31-405 et. seq., MCA.

9           2. The Montana Supreme Court has approved the practice of  
10 the Board of Personnel Appeals using Federal Court and National  
11 Labor Relations Board (NLRB) precedents as guidelines in inter-  
12 preting the Montana Collective Bargaining For Public Employees  
13 Act as the state act is so similar to the Federal Labor Manage-  
14 ment Relations Act, State ex rel. Board of Personnel Appeals v.  
15 District Court, 183 Mont. 221, 598 P.2d 1117, 103 LRRM 2297;  
16 Teamsters Local No. 45 v. State ex rel. Board of Personnel  
17 Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012; City of  
18 Great Falls v. Young (Young III), 211 Mont. 13, 686 P.2d 185,  
19 119 LRRM 2682.

20           3. Pursuant to Section 39-31-406 MCA, the Complainant's  
21 case must be established by a preponderance evidence before an  
22 Unfair Labor Practice may be found, Board of Trustees v. State of  
23 Montana, 103 LRRM 3090, 604 P.2d 1770, 185 Mont. 89. See also  
24 Indiana Metal Products v. NLRB, 1953 CA 7, 31 LRRM 2490, 202 F.2d  
25

1 613 and NLRB v. Kaiser Aluminum and Chemical Corporation, 24 LRRM  
2 2412, 217 F.2d 366, 1954 CA 9.

3 4. Pursuant to Section 39-31-201 public employees shall  
4 have and shall be protected in the exercise of the right of self  
5 organization, to form, join, or assist any labor organization, to  
6 bargain collectively through representatives of their own  
7 choosing on questions of wages, hours, fringe benefits, and other  
8 conditions of employment, and to engage in other concerted  
9 activities for the purpose of collective bargaining or other  
10 mutual aid or protection free from interference, restraint, or  
11 coercion.

12 Pursuant to Section 39-31-402 MCA, it is an Unfair Labor  
13 Practice for a labor organization or its agents to: (1) restrain  
14 or coerce employees in the exercise of the rights guaranteed in  
15 39-31-201 or a public employer in the selection of his represent-  
16 ative for the purpose of collective bargaining or the adjustment  
17 of grievances; (2) refuse to bargain collectively in good faith  
18 with the public employer if it has been designated as the  
19 exclusive representative of employees; (3) use agency shop fees  
20 for contributions to political candidates or parties at state or  
21 local levels.

22 5. National Labor Relations Board precedent holds that a  
23 labor organization restrains or coerces employees in the exercise  
24 of their Section 39-31-201 rights when it fines a member for  
25 supporting a decertification effort. However, it is also well

1 established that a labor organization may expel a member for  
2 bringing a petition for its decertification. See Tawas Tube  
3 Products, Inc., 58 LRRM 1330, 151 NLRB 9, February 15, 1965;  
4 National Labor Relations Board v. Molders Local 125, 77 LRRM  
5 2067, 442 F.2d 92 1971 CA 7; and Steelworkers Local 4028, 60  
6 LRRM 1008, 154 NLRB 692, August 25, 1965 affirmed in Price v.  
7 National Labor Relations Board, 64 LRRM 2495, 373 F.2d 443, 1967  
8 CA 9, cert denied, 65 LRRM 2408, 392 US 904, June 10, 1968.

9 In International Molders' and Allied Workers Local  
10 No. 125, AFL-CIO (Blackhawk Tanning Co., Inc.) the  
11 Board (National Labor Relations Board) held that while  
12 a labor organization may properly seek to defend its  
13 status as collective-bargaining representative by  
14 expelling employee-members who filed decertification  
15 petitions or participated in activities in support  
16 thereof, it may not fine a member for filing a decerti-  
17 fication petition since that action is punitive and  
18 improper rather than defensive and, therefore, in  
19 violation of the Act:

20 "In short, where the union member is seeking to  
21 decertify the union, the Board has said that the public  
22 policy against permitting a union to penalize a member  
23 because he seeks the aid of the Board should give way  
24 to the union's right to self-defense. But when a union  
25 only fines a member because he has filed a decertifica-  
tion petition, the effect is not defensive and can only  
be punitive - to discourage members from seeking such  
access to the Board's processes; the union is not one  
whit better able to defend itself against decertifica-  
tion as a result of the fine. The dissident member  
could still campaign against the union while remaining  
a member and therefore be privy to its strategy and  
tactics. Teamsters Local 165, 86 LRRM 1433, 211 NLRB  
707, June 18, 1974 (citations and italics omitted).

6. Pursuant to the foregoing, it was an Unfair Labor  
Practice for the Defendants to discipline the Complainant with a  
fine for supporting the decertification effort. However, that

1 matter was rendered moot when the American Federation of State,  
2 County and Municipal Employees internal procedures denied the  
3 Defendants' request for a fine. Steelworkers Local 4028, 60  
4 LRRM 1008, 154 NLRB 692, August 25, 1965 affirmed in Price v.  
5 National Labor Relations Board, 64 LRRM 2495, 373 F.2d 443, 1967  
6 CA 9, cert denied, 68 LRRM 2408, 392 US 904, June 10, 1968. See  
7 also Wiglesworth v. Teamsters, 93 LRRM 2801, 552 F.2d 1027, 1976  
8 CA 4 cert denied, 95 LRRM 2575, 41 US 955, June 6, 1977.

9 It was not an Unfair Labor Practice for the Defendants to  
10 seek the Complaint's expulsion.

11 VI. RECOMMENDED ORDER

12 The above captioned matter is hereby dismissed.

13 VII. SPECIAL NOTICE

14 Exceptions to these Findings of Fact, Conclusions of Law and  
15 Recommended Order may be filed within twenty (20) days of  
16 service thereof. If no exceptions are filed, this Recommended  
17 Order shall become the final order of the Board of Personnel  
18 Appeals. Address exceptions to the Board of Personnel Appeals,  
19 P.O. Box 1728, Helena, MT 59624-1728.

20 DATED this 2nd day of October 1990.

21 BOARD OF PERSONNEL APPEALS

22  
23 By:

  
24 Arlyn L. Plowman  
25 Hearing Examiner